a matter for the jury to determine the intent of the parties, *Bogk v. Gessert,* 149 U. S., 17; *Clup v. Wooten,* 29 Miss., 503; *Morris v. Budlong,* 78 N. Y., 543, but in the absence of evidence it is a question of law for the court to determine from the writing alone, *Kieth v. Catchings,* 64 Ga., 773; *Munro v. Watson,* 6 Grant Ch. U. C., 60; *Beale v. Ryan,* 40 Tex., 399, and if nothing so tending appears on the face it will not be construed a mortgage, *Reynolds v. Reynolds,* 42 Wash., 107; *Runyon's Adm'r v. Pogue,* 19 Ky. Law, 940. Some cases even hold that conclusive evidence is necessary to establish a mortgage, *Lincoln v. Wright,* 5 Tenn., 1142; *Woods v. Jensen,* 130 Cal., 205; *Kibby v. Harsh,* 61 Iowa, 196, others incline to the view that a mere preponderance of evidence is enough, *Wallace v. Berry,* 83 Tex., 328; *Miller v. Yturria,* 69 Tex., 549; *Kellogg v. Northrup,* 115 Mich., 327, but some jurisdictions do not accept this rule if there is a substantial conflict in the testimony, *Perot v. Cooper,* 17 Colo., 80; *Howe v. Fisher,* 2 Barb. Ch., 559. There are also states which hold, contrary to the principal case, that when a deed absolute on its face is shown to be either a sale with a right to redeem or a mortgage, a less degree of proof is required for the latter than the former. *Cosby v. Buchanan,* 81 Ala., 574; *Michell v. Wellman,* 80 Ala., 16; *Howland v. Blake,* 97 U. S., 624. In Georgia it was held that on a bill in equity seeking to foreclose on a deed absolute on its face as a mortgage, that an instruction that it must be shown by clear and convincing to be a mortgage is erroneous, *DeLaigle v. Denham,* 65 Ga., 482, and in West Virginia that where the parol evidence leaves it in doubt as to whether the paper is a mortgage or an absolute deed, the court will incline to construe it a mortgage. *Gilchrist v. Beswick,* 33 W. Va., 168.

MORTGAGES—ANTECEDENT DEBT—BONA FIDE PURCHASER FOR VALUE.—HUNT V. HUNT, 134 PAC. (ORE.), 1180.—*Held,* that an employer who accepted a mortgage from an employee for the amount embezzled by the latter and extended the time of payment of such amount six years, was a *bona fide* purchaser for value as against the employee's wife who was induced to join in the mortgage by her husband's false representations, since extending the time for the payment of an antecedent debt is sufficient to constitute a mortgagee a purchaser for a valuable consideration.

The general rule is that an antecedent debt is good consideration to sustain a mortgage given therefor as security, *Usina v. Usina,* 58 Ga., 178; *Hewitt v. Powers,* 84 Ind., 295; *Laylin v. Knox,* 41 Mich., 40; *Rea v. Wilson,* 112 Iowa, 517, and the weight of authority accords with the principal case in that one who joins a new consideration to the old debt is regarded as a *bona fide* purchaser for value, *Whitfield v. Riddle,* 78 Ala., 99; *Cook v. Parham,* 63 Ala., 456; *Douglas v. Miller,* 102 N. Y. App. Div., 94; *Branch v. Griffin,* 99 N. C., 173, but the mortgagee must be divested of some right or surrender some security to free himself from equities. *Salisbury Savings Society v. Cutting,* 50 Conn., 113; *Wells v. Morrow,* 38 Ala., 125; *Smith v. Moore,* 112 Iowa, 60; *Breed v. Auburn National Bank,* 171 N. Y., 648; *Small v. Small,* 34 N. C., 16; *People's Savings Bank v. Bates,* 120 U. S., 556. As in the case under discussion, the extension of time is, in

most jurisdictions, held a good new consideration, *Randolph v. Webb,* 116 Ala., 135; *Gilchrist v. Cough,* 63 Ind., 576; *Cary v. White,* 7 Lans. N. Y., 1; *Missouri Broom Mfg. Co. v. Guyon,* 115 Fed., 112, but the fact, merely, that the taking of the mortgage may extend the time, is not sufficient, *Ingenhuetti v. Hunt,* 15 Tex. Civ. App., 248, nor is the fact that a note payable one day after date was given for an ascertained balance cotemperaneously with a mortgage, *Sweeney v. Bixler,* 69 Ala., 539, and it has been held that if the debt was evidenced by several notes the taking of a new note for the aggregate amount is not a parting with security. *Bisembarke v. Ramsey,* 53 Ind., 499. In *Lonsdale v. Brown,* 4 Wash. C. C., 148, it was said by Mr. Justice Washington that if the forbearance is for a short time it will not be a good consideration but otherwise if it is for a reasonable or indefinite time, referring to Cro. Eliz., 19. In New York extending time of payment is valuable consideration but mere taking of collateral security on time is not. *Cary v. White,* 52 N. Y., 138; *Youngs v. Lee,* 12 N. Y., 551; *Padgett v. Lawrence,* 10 Paige, 170. In other states the indorsee of a bill of exchange, taken as collateral security for an antecedent debt is *prima facie* a holder for value and entitled to recover as against an accommodation acceptor, *Atkinson v. Brooks,* 26 Vt., 569; *Swift v. Tyson,* 16 Pet., 1; *Holmes v. Smith,* 16 Me., 177, but in this connection Pomeroy remarks that, though it has been settled by the law merchant that the transferee of negotiable paper taken for an antecedent debt, may be *bona fide* holder for value, this can have no application to the matter of valuable consideration in the equitable doctrine of *bona fide* purchase. Pom. Eq. Jur. 2, par. 748. There is, indeed, some conflict in the authorities as to whether there must be a surrendering or cancelling of some written paper or security constituting an absolute extinguishment to make the obligee a holder for value, *Soule v. Shotwell,* 52 Miss., 236; *King v. Ford,* 9 Kan., 17; *Love v. Taylor,* 26 Miss., 567, or whether a mere forbearance is enough, *Bank v. Godfrey,* 23 Ill., 579; *Donaldson v. Bank of Cape Fear,* 1 Dev. N. C., 606. Some states go even further than the general rule in asserting that the mere taking of a mortgage for an antecedent debt without a new consideration will make the mortgagee a *bona fide* purchaser for value, *Babcock v. Jordan,* 24 Ind., 14; *Frey v. Clifford,* 44 Cal., 335, contrary to the doctrine that something of value must be parted with, *Mingus v. Condit,* 23 N. J. Eq., 313; *Clark v. Flint,* 22 Pick., 231; *R. R. Co. v. Barker,* 5 Casey (Pa.), 160. On principle, the cases holding this latter view would seem to enunciate the better rule. It is impossible to see why an agreement to forbear from suit should constitute one a purchaser for a valuable consideration, if forbearance itself, in taking the mortgage as security and refraining from the institution of proceedings to enforce the debt does not. The mortgagee after such action should stand in no worse position as to his rights against those in privity with the mortgagor than if he had made an agreement not to sue. It is also illogical to hold that the shortness of time of forbearance can have any relation to the question of value, for the consideration, though the forbearance be for ever so short a time, is still present.

PLEADING—ANSWER—INCONSISTENT PLEAS.—KERR GLASS MFG. CO. v. AMERICUS GROCERY CO., 79 S. E. (GA.), 381.—*Held,* that a defendant may